

Exhibit 3

Public Redacted Version

1
2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 SAN FRANCISCO DIVISION

5 -----X
6 IN RE GOOGLE PLAY STORE Case No.
7 ANTITRUST LITIGATION 3:21-md-02981-JD

8 THIS DOCUMENT RELATES TO:

9 Epic Games Inc. v. Google LLC, et al.,
Case No: 3:20-cv-05671-JD

10 In re Google Play Consumer
11 Antitrust Litigation,
Case No: 3:20-cv-05761-JD

12 In re Google Play Developer
13 Antitrust Litigation,
Case No: 3:20-cv-05792-JD

14 State of Utah, et al., v.
15 Google LLC, et al.,
Case No: 3:21-cv-05227-JD

16 -----X

17
18 *HIGHLY CONFIDENTIAL - UNDER PROTECTIVE ORDER*

19
20 REMOTE VIDEOTAPED DEPOSITION BY VIRTUAL ZOOM OF
21 JAMES KOLOTOUROS
22 February 2, 2022
23 9:01 a.m. Eastern Standard Time
24

25 Reported by: Fran Insley

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2 the Witness herein, having first been duly
3 sworn by the Notary Public, was examined and
4 testified as follows:

5 EXAMINATION BY MS. MOSKOWITZ:

6 Q. Good morning, Mr. Kolotouros.

7 A. Good morning.

8 Q. I've just said your name, but if you
9 wouldn't mind, please, stating your name, full
10 name for the record.

11 A. Jim Kolotouros.

12 Q. And can you provide your address?

13 A. My home address or my current
14 address for the -- where I'm seated?

15 Q. I was going to ask where you were
16 currently sitting second, but if you could give
17 your work or home address as you prefer.

18 A. I am currently in the law offices of
19 Morgan Lewis on 1400 Page Mill Road in Palo
20 Alto, and my work address is 1600 Amphitheater
21 Parkway, Mountain View, California, 94043.

22 Q. Is there anyone in the room with you
23 now?

24 A. No, there is not.

25 Q. If someone does enter the room, do

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2 A. I would include the development NDA
3 as an agreement of substance.

4 Q. That's a Confidentiality Agreement?

5 A. That's correct, yes.

6 Q. So, in addition to the NDA or
7 Confidentiality Agreement, we have the MADA,
8 the RSA, and the -- either the AFA or ACC?

9 A. It's the ACC and the MADA and the
10 RSAs are only entered into with a small
11 percentage of OEMs in the ecosystem.

12 Q. Small percentage by number or by
13 revenue or what metric do you say -- say that?

14 A. Traditionally, the RSAs are only
15 entered into with partners who are delivering
16 significant device volume and have the prospect
17 of successfully competing with Apple and
18 iPhone.

19 Q. And just in case it's not clear, I
20 would like it to be clear, I am now questioning
21 you in your capacity as Google's corporate
22 representative on topics that we just
23 discussed. Is that understood?

24 A. I understand.

25 Q. Thank you. And just going back to

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2 what he is saying here?

3 MR. POMERANTZ: Object to the form.

4 A. I believe that's what he might be
5 saying.

6 Q. In fact, one of the terms in the
7 RSAs, at least in some of the tiers is, in
8 fact, to prevent OEMs from preinstalling
9 competing app stores to Google Play?

10 A. In which timeframe?

11 Q. Currently.

12 A. There is a device by device election
13 that OEMs can opt into with respect to revenue
14 share, but this e-mail was five years in
15 advance of -- the timing is a little bit off in
16 terms of what Tanuj is saying.

17 Q. When did Google first impose any
18 provision in any RSA that entitled an OEM to a
19 certain revenue share if it agreed not to
20 preinstall a competing app store to Google
21 Play?

22 A. I think there were some Play revenue
23 share deals in advance of my arrival in Android
24 that contemplated those kinds of provisions and
25 I think that in late 2019, early 2020, the

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2 notion of Play revenue share began to be

3 introduced into a subset of OEM deals.

4 Q. So separate from the type of revenue

5 share that OEM might get, right, whether it's

6 Search or Play, set that aside for a moment.

7 I'm asking whether -- when Google imposed the

8 restriction in any RSA tier or agreement that

9 restricted the OEM from installing a competing

10 app store to Google Play?

11 A. I think in the early 2020 timeframe.

12 Q. So before early 2020, Google did not

13 have a restriction in any RSA, in any tier of

14 any RSA that prevented an OEM from

15 preinstalling a competitive app store?

16 A. I, with the exception of two deals

17 that predated my arrival there, are materials

18 I'm not familiar with, so I don't want to

19 presume there are restrictions or language in

20 those agreements, the device by device tiering

21 in connection with package install permissions

22 was introduced in early 2020 I believe.

23 Q. The last paragraph here from

24 Mr. Raja suggests that there be "an overall

25 strategic discussion on how to bring OEMs

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2 thinking was when I wrote this note.

3 Q. Without disclosing any legal advice,
4 generally do you have a recollection of what
5 you were referring to here even if not
6 specifically?

7 A. I do not.

8 Q. With respect to the RSAs, you're
9 familiar with the term RSA3.0, right?

10 A. I am, yes.

11 Q. You were part of a team that worked
12 on the new RSA3.0 template for OEMs, other than
13 [REDACTED] correct?

14 A. That is correct.

15 Q. And [REDACTED] wasn't part of that
16 process because it was on a separate track,
17 separate project, right?

18 A. It was a different cadence, yes.

19 Q. And a separate project, right?

20 A. They had a different timeline and a
21 different deal than the other OEMs; that is
22 correct.

23 Q. So, the RSA3.0 template was intended
24 to be used for all OEMs that were going to be
25 getting an RSA other than [REDACTED] right?

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2 A. I don't think so, but I have not
3 seen the precise analysis for each OEM for the
4 tiers that were associated with the deals.

5 Q. Sitting here today, you're not aware
6 of any instance of that?

7 A. Aside from the potential [REDACTED]
8 example?

9 Q. Right. So other than the potential
10 [REDACTED] example, sitting here today you were
11 not aware of any instance where a device being
12 added to an RSA did not make Google money?

13 A. Correct.

14 Q. You presented RSA3.0 to the business
15 council at Google; is that right?

16 A. I don't know if it was me that
17 presented it.

18 Q. You worked on a presentation that
19 was presented to the business council on
20 RSA3.0?

21 A. I think the presentation was worked
22 on by Anna and delivered by Anna, but I'm not a
23 hundred percent sure.

24 Q. Separate from who was the speaker,
25 you were familiar with and contributed to the

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2 actual physical or digital presentation that
3 was prepared in connection with that meeting;
4 is that right?

5 A. Yes, I was.

6 Q. If you could go to your Exhibit
7 Share to Exhibit 624.

8 (Whereupon document was marked
9 Exhibit 624 for identification as of this
10 date.)

11 Q. And while you're pulling that up,
12 this is Google-Play 004488106.R through --

13 A. Okay.

14 Q. One moment. Loading. I'm looking
15 for the last Bates number. Through 4488164.R.
16 Do you have it open?

17 A. This is Exhibit 624?

18 Q. Correct. Yes, I do.

19 Q. This is the presentation that we
20 just discussed that you were involved in
21 preparing that was ultimately presented to the
22 business council about RSA3.0?

23 A. Yes.

24 Q. And this document was created and
25 maintained in the ordinary course of business

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2 at Google?

3 A. Yes.

4 Q. The title is "Google Distribution On
5 The Android Framework." Do you see that?

6 A. I do.

7 Q. That's another name for RSA3.0; is
8 that fair?

9 A. I think that's fair, yes.

10 Q. It mentions here that it was also
11 presented to PEX. Can you explain what P-E-X
12 is?

13 A. I believe it stands for platforms in
14 ecosystems cross functional team or it's a
15 group that also reviews deals that are smaller
16 in school than what BC reviews.

17 Q. Did it serve in this instance as a
18 prereview before RSA3.0 went to business
19 council?

20 A. I don't know. I don't recall if it
21 went to PEX first.

22 Q. So I take it you don't recall the
23 PEX presentation or whether you attended or
24 not?

25 A. That is correct.

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2 A. That is correct, yes.

3 Q. And because of their rapid growth,
4 Google viewed those OEMs as strategically
5 important to try to include them in RSA
6 agreements that would provide the benefits to
7 Google that we discussed earlier?

8 A. We wanted to more closely align with
9 them because they were not only successful in
10 growing, but they were also developing devices
11 that had a high probability of competing
12 successfully or more successfully versus
13 iPhone.

14 Q. They also had experience with their
15 own app store, correct?

16 A. Yes, by virtue of having to create
17 app stores and operate app stores in the
18 Chinese market.

19 Q. So all of those OEMs had the
20 potential to have app stores that competed with
21 Google Play in markets outside of China?

22 A. Yes.

23 Q. If you go to the next slide ending
24 8109. Are you there?

25 A. Sorry.

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2 Q. Then with respect to the final tier,
3 it's called Google Forward. That's also
4 referred to as the premier tier elsewhere; is
5 that right?

6 A. The premier tier, yes, that is
7 correct.

8 Q. And the idea of the premier tier was
9 that it would be used on high end Android
10 devices?

11 A. I think it could be used on any
12 devices that the OEM elected to enroll the
13 devices -- enroll in the tier.

14 Q. Again, like the optimized tier, the
15 premier tier would be entered into on a device
16 by device level, right?

17 A. That is correct, yes.

18 Q. But in order to be in the premier
19 tier, you also have to have that same device in
20 the optimized tier?

21 A. Correct.

22 Q. But some of the requirements are
23 listed here in terms of what would be required
24 on the OEM's part for that device to qualify
25 for the premier tier; is that right?

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2 Chinese OEMs that had alternative app stores
3 were being contemplated to receive double or
4 more than double Google Play rev share than the
5 OEMs that did not have those alternative app
6 stores, correct?

7 A. The economic compensation for Play
8 Store was reflected differently in different
9 deals. So I'm not drawing the correlation
10 between the prior slide and the reps of their
11 stores as much as I am their ability to compete
12 with iPhone and our desire for them to create
13 devices that could compete successfully versus
14 iPhone.

15 Q. Well, part of participation in the
16 Google premier tier was exclusive preinstall of
17 Google Play to the exclusion of any alternative
18 app stores, correct?

19 A. As part of the out of box
20 experience, correct.

21 Q. Which is why I said preinstall. So
22 part of the ability to get into the premier
23 tier, the OEM had to agree not to preinstall
24 any other app store other than Google Play,
25 correct?

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2 A. I believe that's the case, yes.

3 Q. And that means for the Chinese OEMs
4 like Xiaomi, Oppo, Vivo, et cetera, that they
5 would have to forego their alternative app
6 stores that they already had and preinstall
7 only Google Play for their device launches,
8 correct?

9 A. If they elected to enroll devices in
10 this tier, correct.

11 Q. Right and to make it worth their
12 while, Google had to offer a higher Play rev
13 share to incentivize those OEMs to forego
14 preinstalling their own app store, right?

15 A. I wouldn't necessarily draw that
16 conclusion.

17 Q. You don't draw that conclusion in
18 any way, shape or form?

19 A. I think that our desire was to align
20 particularly closely with those OEMs who were
21 competing particularly well in our minds
22 relative to Apple.

23 Q. What did making them install Google
24 Play to the exclusion of their own app stores
25 do for that goal?

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2 A. They would make it much more
3 equivalent to the app store experience or the
4 app download experience that is offered on
5 iPhones versus going to a new Android phone and
6 seeing multiple app stores which could create
7 confusion and cause a user to question whether
8 or not this is the kind of device or ecosystem
9 they want to be in.

10 Q. So you think that a consumer faced
11 with more than one store option on their
12 Android devices is a negative user experience?

13 A. As part of the out of box
14 experience, it is my belief that the competing
15 with Apple iPhone requires the most efficient
16 experience possible to be successful.

17 Q. One way for an OEM to be successful,
18 however, would be to pay Google no money in
19 connection with apps downloaded onto its
20 devices through alternative app stores, right?

21 A. I'm sorry, can you repeat the
22 question?

23 Q. An OEM that has its own app store
24 where users can download apps outside of Google
25 Play through those alternative app stores we

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2 discussed earlier, those OEMs pay Google
3 0-dollars in connection with those downloads or
4 the in-app purchases that are made on the apps,
5 correct?

6 A. Yes.

7 Q. So in order to use Google Play, an
8 app -- the OEM gives up all of that money,
9 correct?

10 A. Oh, if they elect to not preload
11 their store; that is correct.

12 Q. So in order for an OEM to decide
13 instead of downloading my own app store where I
14 make money and go to Google Play where I make
15 no money, Google has to give those OEMs actual
16 money to incentivize them to make that trade,
17 right?

18 MR. POMERANTZ: Objection to the
19 form.

20 A. It was a matter of giving them a
21 choice and recognizing potential opportunity
22 cost of that choice.

23 Q. Right and the opportunity cost to
24 OEMs that had actual alternative competing app
25 stores was higher than for OEMs that did not

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2 yet have an alternative app store that could
3 compete with Google Play, right?

4 A. I think that -- I can't precisely
5 say exactly why these particular OEMs and if it
6 was correlated to their own stores. I don't
7 recall hearing that.

8 Q. I'm asking a separate question. The
9 opportunity costs to OEMs that already had
10 competing app stores was higher than for OEMs
11 that do not yet have an alternative app store
12 that could compete with Google Play, correct?

13 MR. POMERANTZ: Object to the form.

14 A. Well, I think it depends on how the
15 device -- how the OEMs have decided to get to
16 the device with respect to other stores that
17 might include third party stores as well.

18 Q. So you're not willing to acknowledge
19 that an OEM that had the ability to launch a
20 competing alternative app store and have rev
21 share in connection with those stores had
22 higher opportunity costs for dropping those
23 alternative stores as preinstalls than for OEMs
24 that did not have their own alternative app
25 store?